

Ree 551847

15
EX A

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ADVANCE STEEL CO.,

Plaintiff,

v.

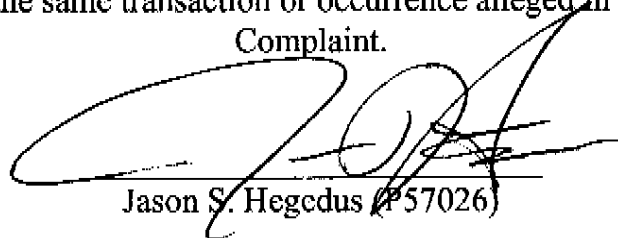
TRIORIENT TRADING, INC.,

Defendant.

Case: 2:06-cv-15474
Assigned To: Battani, Marianne O
Referral Judge: Whalen, R. Steven
Filed: 12-11-2006 At 02:17 PM
CMP ADVANCED STEEL VS TRIORIENT TRA
DING (LE)

JASON S. HEGEDUS, PLC
By: Jason S. Hegedus (P57026)
Attorney for Plaintiff
1668 Telegraph Road, Suite 140
Bloomfield Hills, Michigan 48302
(248) 283-0642

There is no other pending or resolved civil action arising out
of the same transaction or occurrence alleged in this
Complaint.



Jason S. Hegedus (P57026)

COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff, Advance Steel Co. ("Advance Steel"), by and through its counsel, Jason S. Hegedus, PLC, and complains for money damages against Defendant, Triorient Trading, Inc. ("Defendant"), for the following reasons:

PARTIES, JURISDICTION AND VENUE

1. Advance Steel is a Michigan corporation with its principal place of business in Michigan systematically and continuously transacting business throughout Metropolitan Detroit, including the County of Wayne.
2. Defendant is a New York Corporation with its principal place of business in Connecticut, but systematically and continuously transacting business throughout Metropolitan Detroit, including the County of Wayne.
3. This lawsuit arises out of a contractual relationship for the purchase of steel between Advance Steel and Defendant and concerns Defendants failure to fulfill its obligation by delivering inferior steel thereby causing damages to Plaintiff.
4. This court has original jurisdiction over this action pursuant to 28 U.S.C. 1332(a)(1), as this action is between citizens of different states and the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.
5. Venue is proper in this district pursuant to 28 U.S.C. 1391(a), as Triorient conducts business in this district in which a substantial part of the events giving rise to the claims asserted in this action accrued.

GENERAL ALLEGATIONS

5. Advance Steel incorporates by reference all paragraph nos. 1 through 5 as if fully stated herein.

6. On or about March 11, 2004, Advance Steel purchased steel from Defendant (See Exhibit "A").

7. At the time of the agreement, Advance Steel needed the steel so it could be resold to its client for use in constructing buildings.

8. Moreover, Defendant knew that the steel was going to be used in the construction of buildings.

9. In addition, Defendant knew that the gauge tolerances on the steel had to be as follows: 4,800,000 lbs of a .057 minimum gauge steel and 4,800,000 lbs of a .068 minimum gauge steel (See Exhibit "A").

10. Defendant delivered the steel to Advance Steel and Advance Steel paid Defendant in full.

11. Upon receipt of the steel, Advance Steel delivered the steel to its client MBCI.

12. On or about September 20, 2004, MCBI notified Advance Steel that there were defects with the steel. Specifically, Advance Steel was notified that a large portion of the steel was below the minimum gauge requirement as agreed to by Defendant. Shortly thereafter, MCBI notified Advance Steel that a large portion of steel was flaking and peeling thereby making it nonusable.

13. These and other defects rendered Defendant's steel unusable for Advance Steel's intended purposes.

14. The defects and failure to meet specifications in the steel have caused Advance Steel to incur substantial expenses and other damages including consequential and incidental damages. These damages include, but are in no way limited to, storage charges, lost profits, lost business opportunities, loss of goodwill, attorney's fees and interest. Advance Steel's damages continue to accrue.

COUNT I
BREACH OF CONTRACT

15. Advance Steel incorporates by reference paragraph nos. 1 through 14 as if fully stated herein.

16. Pursuant to their agreement, Defendant was contractually obligated to deliver to Advance Steel steel that met specifications, was free from defects and was fit for Advance Steel's intended purposes.

17. Advance Steel has fulfilled all of its material contractual obligations to Defendant.

18. Defendant's delivery of defective steel constitutes a breach of the contract.

19. As a direct and proximate result of Defendant's breach, Advance Steel has sustained damages that include, but are not limited to, storage charges, lost profits, lost business opportunities, loss of goodwill, consequential and incidental damages, and attorney's fees and interest.

WHEREFORE, Advance Steel Co. respectfully requests that this Honorable Court enter a judgment in favor of Advance Steel and against Defendant in excess of seventy five thousand (\$75,000.00) dollars as this Honorable Court deems fair and equitable and further order Defendant to pay costs and attorney fees so unjustly sustained.

COUNT II
BREACH OF EXPRESS WARRANTY

20. Advance Steel incorporates by reference paragraph nos. 1 through 19 as if fully stated herein.

21. Defendant expressly warranted to Advance Steel that the steel it supplied to Advance Steel would be the correct gauge, free from defects, and fit for Advance Steel's intended purposes.

22. The steel delivered by Defendant was not of the correct gauge, not free from defects, and not fit for Advance Steel's intended purpose.

23. The defects in the steel delivered by Defendant are not curable.

24. Defendant's actions constitute a breach of the express warranty.

25. As a direct and proximate result of Defendant's breach of its express warranty, Advance Steel has sustained damages that include, but are not limited to, storage charges, lost profits, lost business opportunities, loss of goodwill, consequential and incidental damages, and attorney's fees and interest.

WHEREFORE, Advance Steel Co. respectfully requests that this Honorable Court enter a judgment in favor of Advance Steel and against Defendant in excess of seventy

five thousand (\$75,000.00) dollars as this Honorable Court deems fair and equitable and further order Defendant to pay costs and attorney fees so unjustly sustained.

COUNT III
BREACH OF IMPLIED WARRANTY

26. Advance Steel incorporates paragraph nos. 1 through 25 as if fully stated herein.

27. Defendant is a merchant that sells goods of the kind (i.e., the steel) sold to Advance Steel.

28. Implied in the contract between Advance Steel and Defendant is a warranty that the steel provided by Defendant to Advance Steel would be merchantable.

29. To be merchantable, the Defendant's steel was required to: a) pass without objection in the trade under the contract description; b) be fit for the ordinary purposes for which such goods are used; c) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and d) conform to the promises or affirmations of fact made on the container or label, if any.

30. Defendant breached the implied warranty of merchantability.

31. As a direct and proximate result of Defendant's breach of this implied warranty, Advance Steel has sustained damages that include, but are not limited to, storage charges, lost profits, lost business opportunities, loss of goodwill, consequential and incidental damages, and attorney's fees and interest.

WHEREFORE, Advance Steel Co. respectfully requests that this Honorable Court enter a judgment in favor of Advance Steel and against Defendant in excess of seventy five thousand (\$75,000.00) dollars as this Honorable Court deems fair and equitable and further order Defendant to pay costs and attorney fees so unjustly sustained.

COUNT IV
BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR
PURPOSE

32. Advance Steel incorporates by reference paragraph nos. 1 through 31 as if fully stated herein.

33. Defendant, at the time of contracting with Advance Steel, knew and/or had reason to know of particular purposes for which Advance Steel required the steel and that Advance Steel was relying on Defendant's skill and judgment to select and furnish suitable goods.

34. Implied in the sales contract between Defendant and Advance Steel is a warranty that the steel would be fit for Advance Steel's purposes.

35. Defendant breached the implied warranty of fitness for a particular purpose between the parties when it provided Advance Steel with steel that was not fit for Advance Steel's purposes.

36. As a direct and proximate result of Defendant's breach of this implied warranty, Advance Steel has sustained damages that include, but are not limited to,

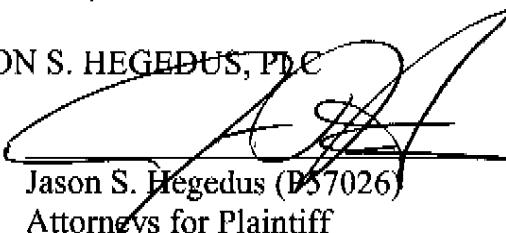
storage charges, lost profits, lost business opportunities, loss of goodwill, consequential and incidental damages, and attorney's fees and interest.

WHEREFORE, Advance Steel Co. respectfully requests that this Honorable Court enter a judgment in favor of Advance Steel and against Defendant in excess of seventy five thousand (\$75,000.00) dollars as this Honorable Court deems fair and equitable and further order Defendant to pay costs and attorney fees so unjustly sustained.

Respectfully submitted,

JASON S. HEGEDUS, P.C.

By:



Jason S. Hegedus (D57026)
Attorneys for Plaintiff
1668 Telegraph Road, Suite 140
Bloomfield Hills, Michigan 48302
(248) 283-0642

Dated: December 11, 2006

**UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ADVANCE STEEL CO.,

Plaintiff,

v

TRIORIENT TRADING, INC.,

Defendant.

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JASON S. HEGEDUS, PLC

By: Jason S. Hegedus (P57026)

Attorney for Plaintiff

1668 Telegraph Road, Suite 140

Bloomfield Hills, Michigan 48302

(248) 283-0642

DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, Advance Steel Co., by and through its counsel, Jason S. Hegedus, PLC, and hereby demands a trial by jury in the above cause.

Respectfully submitted,

JASON S. HEGEDUS, PLC

By: 

Jason S. Hegedus (P57026)

Attorneys for Plaintiff

1668 Telegraph Road, Suite 140

Bloomfield Hills, Michigan 48302

(248) 283-0642

Dated: December 11, 2006

A

ADVANCE STEEL CO.

AS

9635 FRENCH ROAD
DETROIT, MICHIGAN 48213

PH. (313) 571-6700

FAX (313) 571-6707

SHEET • PLATE • COIL



PURCHASE ORDER		NUMBER	PAGE	DATE
SALESPERSON:		#7698	1	03/11/2004
CHAD				RECV DATE:
F.O.B.:		TERMS:		06/01/2004
HOUSTON - LOADED TRK		REGULAR		
BUYER:		SHIP VIA:		VEND ID:
DAVID ZANVILLE		ADVANCE		08301

TRI-ORIENT TRADING
2 STAMFORD PLAZA
281 TRESSEN BLVD. SUITE 1505
STAMFORD, CT 06901

SHIP TO:

ADVANCE STEEL PICKUP
FAX RELEASE ATTN:DAN DICARLO
FAX: 313-571-6707

TERMS: 0.50% 10 DAYS, NET 30 DAYS

MBCI

LINE	ITEM	LENGTH DESCRIPTION	WEIGHT	COST	AMOUNT
001	48.18700"		4800000 LBS	39.50/CWT	1,896,000.00
	G416	16 GA HOT-DIPPED GALV COIL 0579 MIN .48.1870 X COIL HD GALV. PRIMES			
		ASTM A653 GRADE 50			
		GA TOL: .057/.063 AIM LOW SIDE OF GAUGE			
		WIDTH TOL: +.125 -.000 ID: 20/24 LIFT WT: 15-20,000#			
		END USE: ROLL FORMING OHC UNLOADING			
		AIM 57000min YLD 70000min TEN 21%max ELONG IN 2"			
		FOB: LOADED TRUCK DUTY PAID - HOUSTON			
		DELIVERY DATE: 6/01/04 OR ASAP			
		* ORDER REVISED PER D.ZANVILLE 3/22/04			
002	MISC		0 LBS	0.00/0	0.00
		* CERTIFICATION REQUIRED			
		* WE WILL NOT ACCEPT STEEL WITH LARGE CENTER			
		BUCKLES OR BELLED EDGES			
		* ALL STEEL SHALL CONFORM TO GAUGE TOLERANCES,			
		SURFACE STANDARDS, AND BE OF GOOD SHAPE. IN THE			
		EVENT WE RUN INTO LAMINATION, PICKLE PATCH,			
		SCALE, MULTI-GAUGE, OR SEVERE FLATNESS PROBLEMS;			
		WE WILL AUTOMATICALLY SEEK AN ADJUSTMENT AND			
		FINALIZE IF YOU CHOOSE TO SEND YOUR			
		REPRESENTATIVE.			
4,800,000 TOTAL LBS			ORDER TOTAL	1,896,000.00	

If there are any corrections to be made, please advise within three days. We reserve the right to correct all stenographic errors.
Kindly render invoices in duplicate. The above order number must appear on all invoices and slips.
This order not valid unless acknowledged and accepted immediately.
If the material is not shipped on or before the time specified herein, the purchaser has privilege of cancelling without notice.

Authorized By

Accepted By

COPY 5

AS9635 FRENCH ROAD
DETROIT, MICHIGAN 48213

PH. (313) 571-6700

FAX (313) 571-6707

SHEET • PLATE • COIL

**ADVANCE STEEL CO.**

PURCHASE ORDER	NUMBER	PAGE	DATE
SALESPERSON:	#7697	1	03/11/2004
CHAD			RECV DATE:
F.O.B.:			05/10/2004
HOUSTON - LOADED TRK	TERMS:		06/01/2004
BUYER:	REGULAR		
DAVID ZANVILLE	SHIP VIA:		VEND ID:
	ADVANCE		08301

TRI-ORIENT TRADING
2 STAMFORD PLAZA
281 TRESSEN BLVD. SUITE 1505
STAMFORD, CT 06901SHIP TO:
ADVANCE STEEL PICKUP
FAX RELEASES ATTN: DAN DICARLO
FAX: 313-571-6707

M001

TERMS: 0.50% 10 DAYS, NET 30 DAYS

LINE	ITEM	LENGTH DESCRIPTION	WEIGHT	COST	AMOUNT
001	48.18750" G415	15 GA HOT-DIPPED GALV COIL .0684 MIN 48.1875 X COIL	4000000 LBS	29.50/CWT	1,580,000.00
		HD GALV. PRIMES ASTM A653 GRADE 50 G90 CHEM TREAT LT. OIL			
		GA TOL: .068/.073 AIM LOW SIDE OF GAUGE ID: 20/24 LIFT WT: 15-20,000# END USE: ROLL FORMING AIM 57000min YLD 70000min TEN 21% ELONG IN 2" FOB: LOADED TRUCK DUTY PAID - HOUSTON DELIVERY DATE: 5/10/04 OR ASAP			
002	MISC	* CERTIFICATION & PHYSICALS REQUIRED * WE WILL NOT ACCEPT STEEL WITH LARGE CENTER BUCKLES OR BELLED EDGES * ALL STEEL SHALL CONFORM TO GAUGE TOLERANCES, SURFACE STANDARDS, AND BE OF GOOD SHAPE. IN THE EVENT WE RUN INTO LAMINATION, PICKLE PATCH, SCALE, MULTI-GAUGE, OR SEVERE FLATNESS PROBLEMS, WE WILL AUTOMATICALLY SEEK AN ADJUSTMENT AND FINALIZE IF YOU CHOOSE TO SEND YOUR REPRESENTATIVE.	0 LBS	0.00/0	0.00
4,000,000 TOTAL LBS			ORDER TOTAL	1,580,000.00	

If there are any corrections to be made, please advise within three days. We reserve the right to correct all stenographic errors.
Kindly render invoices in duplicate. The above order number must appear on all invoices and slips.
This order not valid unless acknowledged and accepted immediately.
If the material is not shipped on or before the time specified herein, the purchaser has privilege of cancelling without notice.

Authorized By

Accepted By

COPY 4

AS

ADVANCE STEEL CO.

SHEETS • STRIPS • COILS
 9635 French Road • Detroit, MI 48213 • (313) 571-6700
 FAX: (313) 571-6707 • <http://www.advancesteel.com>

FACSIMILE COVER SHEET

DATE: 3/22
 TO: TINA / CHAD / CHANMAYNE
 COMPANY: _____
 # OF PAGES: 1 (including cover)
 FROM: David Z.

REMARKS:

Purchase Orders revisions

PO# 7698

057m x 48.187

increase quantity to 4,800,000 #
@ 39.50

PO# 7697

068m x 48.187

increase quantity to 4,800,000 #
@ 39.50

David Z.

This civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of maintaining the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFSAdvanced Steel, Inc.

(b) County of Residence of First Listed Plaintiff Wayne County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
JASON S HEGEDUS PLC,
1668 Telegraph Rd., Suite 140, Bloomfield Hills MI 48302
(248) 283-0642

DEFENDANTSTrorient Trading, Inc.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Select One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Select One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Select One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Arch. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> Case: 2:06-cv-15474 <input type="checkbox"/> Assigned To: Battani, Marianne O <input type="checkbox"/> Referral Judge: Whalen, R. Steven <input type="checkbox"/> Filed: 12-11-2006 At 02:17 PM <input type="checkbox"/> CMP ADVANCED STEEL VS TRIORIENT TRADING (LE)	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> king <input type="checkbox"/> fenced and rations <input type="checkbox"/> lit <input type="checkbox"/> ce <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609	

V. ORIGIN

- (Select One Box Only)
- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(a)(1)

Brief description of cause:

Breach of contract and warranties related to purchase of steel

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE:

December 11, 2006

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

QUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
